ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	
	)	
and	)	CC Docket No. 96-149
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs' Local Exchange Area	)	

REPLY COMMENTS OF LDDS WORLDCOM

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WorldCom, Inc., d/b/a LDDS WorldCom ("WorldCom"), hereby files its reply comments in response to the initial comments submitted on August 15, 1996 regarding the Notice of Proposed Rulemaking ("Notice"), FCC 96-309, issued by the Commission on July 18, 1996 in the above-referenced proceeding.

I. INTRODUCTION AND SUMMARY

In its initial comments, WorldCom showed how structural separation is the central protection established by the Telecommunications Act of 1996 to deal with the dramatically heightened incentives and opportunities for the Regional Bell Operating Companies to discriminate against competitors in the new telecommunications world. Full implementation of all components of the structural separation provisions of the statute is necessary in order to protect competitors who must rely increasingly on the RBOCs' local exchange and exchange access networks as necessary inputs in their efforts to compete with the RBOCs across all

telecommunications markets. To ensure that the RBOCs do not evade the degree of separation required by the Act, WorldCom proposed as the simplest and fairest solution that the RBOCs' interLATA affiliate be designated as the retail entity to provide one-stop package offerings of local and long distance services. WorldCom also urged the Commission to abide by the clear principles of its Competitive Carrier decisions and apply dominant carrier regulation to the RBOCs' interLATA affiliates.

About 40 separate sets of initial comments were filed in this proceeding. In its reply, WorldCom will focus primarily on some of the principal arguments raised by the RBOCs. In particular, despite the RBOCs' claims, the Act requires that the Commission adopt strong and comprehensive national rules that fully implement the strict structural separation mandated between the RBOCs and their interLATA affiliates. In recognition of the RBOCs' persistent, and even growing, market power, the Commission also must classify the RBOCs' in-region long distance affiliates as dominant carriers.

II. STRONG COMPREHENSIVE RULES ARE NECESSARY TO GOVERN THE STRICT STRUCTURAL SEPARATION MANDATED BY THE 1996 ACT

A. The FCC Must Promulgate New Defining Rules In Order To Properly Implement All Aspects Of The 1996 Act

Several RBOCs argue first that the implementing rules the Commission proposes to adopt in this proceeding are not even necessary because Section 272 already provides

sufficient detail.[1] The RBOCs also claim that Congress never intended for this rulemaking, or any additional FCC requirements, to be promulgated by the Commission.[2]

It is obvious that the new statute, on its face, requires Commission implementation. For example, Section 272(d)(1) of the Act requires a biennial audit that will determine whether the RBOCs have complied with Section 272 "and the regulations promulgated under this section...."[3] Section 272(b)(2) requires the RBOCs and their affiliates to maintain structurally separate books, records, and accounts "in the manner prescribed by the Commission...."[4] Similarly, Section 272(c)(2) requires the RBOCs to account for all affiliate transactions "in accordance with accounting principles designated or approved by the Commission."[5] Each of these provisions calls on the Commission to promulgate implementing regulations that touch on a variety of specific issues, from detailed cost allocation practices to the structural and transactional requirements applicable to the RBOCs and their affiliates. Implementing rules are necessary to establish clear and binding regulations in all these important areas.

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[1] Bell Atlantic Comments at 2-3; BellSouth Comments at 28; USTA Comments at 10-14.

[2] Bell Atlantic Comments at 3-5; SBC Comments at 2, 7, 11, 13-15; PacTel Comments at 3-4, 37; USTA Comments at 3, 6.

[3] 1996 Act, Section 272(d)(1).

[4] 1996 Act, Section 272(b)(2).

[5] 1996 Act, Section 272(c)(2).

In addition, apart from these specific mandates for the Commission to adopt and enforce affiliate and safeguards regulations, the Act explicitly preserves the Commission's existing authority "under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity."[6] Thus, the Commission has been granted further authority to develop any additional safeguard rules and procedures that are in the public interest.

Moreover, many statutory provisions necessarily will require some Commission interpretation. Concepts such as "operate independently," "arm's length basis," and "may not discriminate,"[7] which are otherwise undefined in the Act, all require the Commission to flesh out the meaning of the words so that parties can rely on a single binding interpretation. Indeed, while denying the Commission any role to interpret Section 272, several RBOCs proceed to offer their own definitions of phrases such as "nondiscriminatory" and "operating independently."[8] The very fact that the RBOCs feel compelled to offer their own uniquely-tailored interpretations of Section 272 points up the need for the Commission to adopt uniform national rules, rather than allow the RBOCs to supplant the Commission and assume for themselves the authority to determine how to comply with the textual language.

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[6] 1996 Act, Section 272(f)(3).

[7] 1996 Act, Sections 272(b)(1), 272(b)(5), 272(c)(1).

[8] Bell Atlantic Comments at 4, A-7; BellSouth Comments at 32; PacTel Comments at 29; USTA Comments at 20.

B. The 1996 Act Requires Structural Separation That Is Both Comprehensive And Extensive

The RBOCs argue next that the type of separation required by the Act is in fact very limited. For example, Bell Atlantic states that the separation rules only apply to the RBOC's interLATA affiliate and the operating company, not to other RBOC affiliates or the holding company.[9] The RBOCs also argue that the Act only precludes the sharing employees between the RBOC and its interLATA affiliate, and that common ownership of facilities, functions, and services is allowed.[10] BellSouth goes further to specify that the RBOCs can use their affiliates to own property in common, use the RBOC corporate name, hire and train personnel, purchase and install service, and undertake research and development.[11] USTA also states that the RBOCs can share facilities, common overhead, and administrative functions with their affiliates.[12]

If the RBOCs indeed are correct in finding these extremely broad exceptions to the separate subsidiary requirement, and that the Act allows all the integrated functions they suggest, it is worth asking why a separate subsidiary requirement is even contained in the Act in the first place. The dubious interpretation of Section 272 urged by the RBOCs amounts to a classic case of the exceptions swallowing the rule. The Commission must not give credence

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[9] Bell Atlantic Comments at 5; NYNEX Comments at 23-31; SBC Comments at 7.

[10] Bell Atlantic Comments at B-3; PacTel Comments at 21-22; USTA Comments at 18.

[11] BellSouth Comments at 30.

[12] USTA Comments at 18, 21.

to imaginative attempts to limit, if not eliminate, the definite separation that is required by the Act.

Moreover, despite the RBOCs' claims, the common ownership of anything -- whether it is employees, facilities, or services -- is rendered impossible as a practical matter under no fewer than three separate provisions in Section 272. Section 272(e)(2) prohibits the RBOC from providing to its affiliate "any facilities, services, or information concerning its provision of exchange access," unless those same facilities, services, or information are made available to other competing providers of interLATA services "on the same terms and conditions."[13] Similarly, Section 272(e)(4) prohibits the RBOC from providing "any interLATA or intraLATA facilities or services to its interLATA affiliate" unless those same services or facilities are provided to "all carriers at the same rates and on the same terms and conditions...."[14] An RBOC also "may not discriminate" between its affiliate and any other company "in the provision or procurement of goods, services, facilities, and information."[15] In short, the RBOCs cannot take any action with regard to its affiliate without offering the very same deal to any other competing entity. These three provisions together mean that the RBOCs cannot act in common with their affiliates, unless the RBOCs are prepared to act in common with their competitors as well.

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[13] 1996 Act, Section 272(e)(2).

[14] 1996 Act, Section 272(e)(4).

[15] 1996 Act, Section 272(c)(1).

The RBOCs insist on selectively constrained readings of the Act. For example, Bell Atlantic and USTA claim that the term "operate independently" in Section 272(b)(1) is a generic phrase, the substance of which is clarified by subsections (b)(2) through (b)(5) of Section, and needs no further defining by the Commission.[16] This view is plain wrong. Subsection (b)(1), with its "operate independently" requirement, is wholly independent of the remaining subsections of that provision, and thus must be read on a stand-alone basis. Rather than subsuming the meaning of subsection (b)(1) completely, the other subsections -- including the requirement that all affiliate transactions be made on an arm's length basis -- actually supplement that provision. Seen in this way, the term "operate independently" must be given its plain meaning: to act in an autonomous and self-reliant fashion, free from the influence, guidance, or control of another entity.[17]

Other RBOCs insist that the term "discrimination" in Section 272(c)(1) only means unreasonable discrimination as defined in Section 202.[18] This position ignores the plain language of the provision, which states in simple terms that the RBOCs "may not discriminate" between its affiliate and any other company "in the provision or procurement of goods, services, facilities, and information."[19] Moreover, in its recently-issued Local Interconnection Order,

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[16] Bell Atlantic Comments at 4; USTA Comments at 20.

[17] See Webster's II, New Riverside University Dictionary, Houghton Mifflin Co., 1988, at p. 622 (first two meanings of definition of "independent").

[18] Bell Atlantic Comments at A-7; BellSouth Comments at 32; PacTel Comments at 29.

[19] 1996 Act, Section 272(c)91).

the Commission noted that Congress' use in Section 251 of the word "nondiscriminatory" is not qualified by the "unjust or unreasonable" language found in Section 202(a). The Commission concluded there that Congress did not intend that the term "nondiscriminatory" in the 1996 Act be synonymous with "unjust and unreasonable discrimination" used in the 1934 Act, "but rather, intended a more stringent standard."[20] In that same discussion, the Commission reiterated that the RBOCs "may not discriminate against parties based upon the identity of the carrier."[21] Congress obviously meant what it said in Section 272 as well: that the RBOCs must treat all carriers equally, with no preference of any kind given to its own affiliate. The RBOCs cannot conjure up farfetched rationales to avoid the plain meaning of the statutory language.

In its initial comments in this proceeding, WorldCom urged the Commission to enforce the Act's strict separation requirements by making the RBOCs' interLATA affiliate the primary retail entity for one-stop package offerings that include local and long distance service. This separate affiliate could offer interLATA service in competition with other entities by buying exchange access from the operating company, and also offer local service by purchasing local service elements and wholesale services from the operating company. WorldCom demonstrated how this structure will foster the Act's mandate for full separation of the RBOCs' in-region interLATA services, while still permitting full-service retail competition to proceed.[22]

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[20] Local Interconnection Order, at para. 217.

[21] Id. at para. 218.

[22] Comments of LDDS WorldCom, CC Docket No. 96-149, at 11-18.

Finally, Bell Atlantic claims that the Commission cannot impose strict separation rules on the RBOCs because they will experience at least a 15% increase in costs.[23] Even if the figure cited is accurate -- which is questionable at best -- Bell Atlantic's argument is completely irrelevant. The Act does not ensure cost-free RBOC entry into heretofore prohibited markets. All entities willing and able to compete head-to-head in the new competitive telecommunications landscape will need to incur considerable expenses just to keep up with each other. Of course, if it is a hardship for the RBOCs to compete fairly in the interLATA market with other entities that lack their bottleneck network advantages, the RBOCs are free to stay out of the long distance business altogether.

C. The RBOC Can Only Perform Joint Marketing Of Local And Long Distance Services Through Its Retail Affiliate

The RBOCs all claim that Section 272(g)(2) of the Act, which states that an RBOC "may not market or sell" its affiliate's interLATA services until it is authorized to provide interLATA service,[24] allows joint marketing by the RBOCs once they are in the interLATA market.[25] PacTel insists in particular that the term "market or sell" in Section

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[23] Bell Atlantic Comments at 7.

[24] 1996 Act, Section 272(g)(2).

[25] Bell Atlantic Comments at 8; BellSouth Comments at 7-12; NYNEX Comments at 11-19; SBC Comments at 11-13; PacTel Comments at 39; USTA Comments at 27-30.

272(g)(2) broadly means joint marketing.[26]

As WorldCom explained in its initial comments, Section 272(g)(2) is cast in the negative to prohibit the RBOCs from promoting their interLATA services prior to being granted authorization to actually provide those services. This section does not articulate how the RBOC and its affiliate would be permitted to act after interLATA relief has been granted. That question is answered in full by the various structural requirements of Section 272(b) and Section 272(e). Indeed, to read Section 272(g)(2) as the RBOCs urge is to read the separation provisions right out of the Act.

WorldCom urges the Commission to ignore the RBOCs' self-serving arguments concerning joint marketing, and instead carry out the broad and deep separation called for in the Act. In order for the separate affiliate to operate independently from the operating company, so that any permissible transactions between the RBOC and its affiliate are placed on an arm's length basis, obviously the RBOCs cannot offer and market combined packages of local and interLATA services through the efforts of the local exchange company and interLATA affiliate working together. The plain language of the Act rules out such a close, hand-in-glove relationship. Instead, as WorldCom explained in its initial comments, the RBOCs can provide bundled or jointly-marketed offerings of local and interLATA services only through an interLATA affiliate that obtains local exchange components on the same basis as its

[26] PacTel Comments at 40-41; USTA Comments at 28.

competitors.[27] Such a structure is the only practical way that each of the intertwined protections mandated by Section 272 lead to separate local and long distance operations "operating independently."

III. THE BELL COMPANIES' INTERLATA AFFILIATES MUST BE CLASSIFIED AS DOMINANT

Finally, the RBOCs uniformly claim that their interLATA services should be classified as nondominant.[28] Some RBOCs insist that they will have no market power in the long distance market, especially because they lack any market share.[29]

WorldCom showed in its initial comments that the RBOCs' in-region interLATA affiliate must be classified as dominant under the Commission's current rules.[30] The RBOCs' arguments to the contrary are not persuasive. In particular, the RBOCs' market share arguments are fatally flawed. First, market share in and of itself is not a measure of market power; rather, it is one of many possible indications that market power may exist in a certain market. Further, in its Competitive Carrier Order, the Commission found "control of bottleneck facilities as prima

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[27] Comments of LDDS WorldCom, CC Docket No. 96-149, at 11-18.

[28] Bell Atlantic Comments at 11-20; BellSouth Comments at 39-56; NYNEX Comments at 50-62; SBC Comments at 15-20; PacTel Comments at 47-69; USTA Comments at 37-53.

[29] Bell Atlantic Comments at 15-19; PacTel Comments at 49; USTA Comments at 44-51.

[30] Comments of LDDS WorldCom, CC Docket No. 96-149, at 20-26.

facie evidence of market power requiring detailed regulatory scrutiny."[31] It is readily apparent that the new pro-competition paradigm created by the Telecommunications Act will actually increase reliance on the RBOCs' bottleneck network as local competitors either utilize unbundled network elements or resell the RBOCs' retail services. This increased reliance on the RBOCs' network, combined with the RBOCs' eventual advent into the long distance market, clearly results in a prima facie finding of RBOC market power in both the local exchange and exchange access markets that translates into market power in the in-region interLATA market.[32]

Finally, some RBOCs argue that the FCC should define their geographic market as one national market, not as a point-to-point region for each RBOC.[33] However, the Notice correctly proposes to determine RBOC market power by evaluating the RBOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region.[34] It must be noted that the Telecommunications Act itself distinguishes quite clearly between the RBOCs' out-of-region interLATA services and their in-

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[31] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 21 (1980) ("Competitive Carrier Order").

[32] Even accepting the RBOCs' market share argument on its face, however, the facts dispute the premise. The Commission need only look at the RBOCs' large and growing share of the intrastate toll market within their home regions to realize that they already possess significant market share in their in-region long distance markets.

[33] Bell Atlantic Comments at 12-13, B-7; PacTel Comments at 50-51; USTA Comments at 42-44.

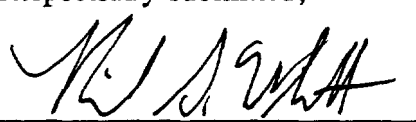
[34] Notice at paras. 125-126.

region interLATA services, and attaches a whole host of structural and accounting safeguards that govern the latter. In its comments in CC Docket No. 96-61, WorldCom also pointed out how the RBOCs' control of access facilities within their region necessitates a regional definition of the geographic market.[35] Thus, the Commission should adopt its proposal to examine the RBOCs' in-region provision of interLATA service on a regional basis.

IV. CONCLUSION

The Commission should act in accordance with the recommendations proposed herein and in WorldCom's initial comments in this proceeding.

Respectfully submitted,



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[35] See Comments of LDDS WorldCom, CC Docket No. 96-61, filed April 19, 1996, at 4-7.

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 30th day of August, 1996, sent a copy of the foregoing "Further Comments of LDDS WorldCom" by hand delivery, or first class mail, postage prepaid, to the following:

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